



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Receive Report Regarding Communications Pertaining to Assembly Bills 438, 646, 1027, 1220, and 1344; Senate Bills 244, 293, 469, 734 and 922; and the Energy Efficiency and Conservation Block Grant Program

MEETING DATE: October 19, 2011

PREPARED BY: City Clerk

RECOMMENDED ACTION: Receive report regarding communications pertaining to Assembly Bills 438, 646, 1027, 1220, and 1344; Senate Bills 244, 293, 469, 734 and 922; and the Energy Efficiency and Conservation Block Grant Program.

BACKGROUND INFORMATION: The City received a request for communications from the League of California Cities (League) regarding its top priority bills and the need to send requests for veto to the Governor's office immediately.

The requests for veto were signed by the Mayor and sent out on September 15, 2011. As you are aware, the Governor had until October 9, 2011 to sign or veto legislation. The status of the bills is as follows:


AB 438 (Williams) County Free Libraries – Signed Into Law Contrary to Request
 AB 646 (Atkins) Compulsory Factfinding – Signed Into Law Contrary to Request
 AB 1027 (Buchanan) Utility Poles – Signed Into Law Contrary to Request
 AB 1220 (Alejo) Land Use / Time Limitations – Vetoed as Requested
 AB 1344 (Feuer) Charter Amendments – Signed Into Law Contrary to Request
 SB 244 (Wolk) Land Use / Disadvantaged Communities – Signed Into Law Contrary to Request
 SN 293 (Padilla) Public Contracts Retention Proceeds – Signed Into Law Contrary to Request
 SB 469 (Vargas) Superstores – Vetoed as Requested
 SB 734 (DeSaulnier) – Local Workforce Investment Boards – Signed Into Law Contrary to Request
 SB 922 (Steinberg) Project Labor Agreements – Signed Into Law Contrary to Request

In addition, at the request of the Department of Energy, a letter in support of the Energy Efficiency and Conservation Block Grant program was sent out to Congressman Jerry McNerny, Senator Barbara Boxer and Senator Diane Feinstein.


This report is provided for informational purposes only.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.


 Randi Johl
 City Clerk

APPROVED:


 Konradt Bartlam, City Manager

CITY COUNCIL

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D. STEPHEN SCHWABAUER
City Attorney

September 15, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, California 95814
Via Facsimile: (916) 445-4633

SUBJECT: AB 438 (Williams). County Free Libraries: Withdrawal.
REQUEST FOR VETO

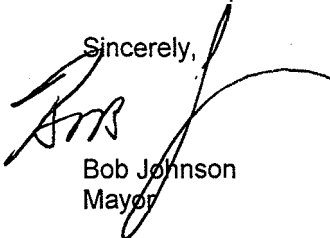
Dear Governor Brown:

The City of Lodi asks for your veto of AB 438, which imposes requirements on a city that contracts for library staffing services. Our concerns are based on the following issues:

- *New Precedent for Cities* AB 438 sets a dangerous new precedent by creating a de facto ban on a contract between a city and a private company for staffing libraries as well as setting an example for future restrictions on local government contracts.
- *AB 438 is a De Facto Ban on Contracts* As noted in the July 7, 2011 Senate Governance and Finance Committee Analysis, "Nearly a decade after the 2001 Alarcon bill imposed conditions on school and community college districts' contracts, apparently no district has contracted with a private firm using the same requirements that AB 438 applies to cities' library service contracts... school and community college districts' experience suggests that AB 438 is probably a de facto prohibition against any city's contract with a private firm."
- *AB 438 Ties the Hands of Local Governments* Cities have traditionally decided what is best for their communities. It's what locally elected officials are elected to do. The ability to contract for services helps cities provide the best service at the best price, which is absolutely critical today given shrinking resources available to local governments. AB 438 undermines a city's ability to protect their library.

For the reasons above, the City of Lodi must respectfully request your veto of AB 438.

Sincerely,



Bob Johnson
Mayor

C: Assembly Member Das Williams (916-319-2135)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Kyra Ross, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: AB 646 (Atkins): Imposes Compulsory Factfinding at Request of
Employee Union. **REQUEST FOR VETO**

Dear Governor Brown,

On behalf of the City of Lodi, we respectfully oppose AB 646 and request that you veto AB 646, which provides that in the event of impasse only the employee organization can request factfinding. Specifically, in the event of impasse, after the parties agree to a mediator and that mediator cannot effect a settlement within 30 days, the employee organization can request that the parties' differences be submitted to a factfinding panel. Additionally, the bill requires that the costs for the factfinding panel be split equally between the local agency and the employee organization.

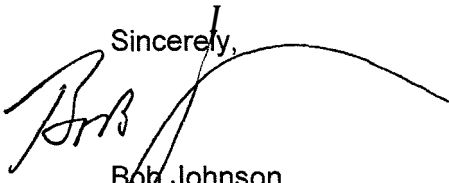
Many cities provide for impasse procedures, including fact-finding, in collective bargaining negotiations and bargain in good faith with their respective employee organizations. AB 646 removes this local authority by giving full discretion to public employee unions to request factfinding once an impasse is reached. Additionally, the significant cost that will be imposed on agencies for a process that is at the sole discretion of the local bargaining unit and not the agency is financially impractical for cities.

We are unaware of any problems with the current process and question the need for making such an important change to California's collective bargaining laws. Local agencies should continue to determine what impasse procedures work best for their local jurisdictions.

Lastly, the provisions in AB 646 could lead to significant delays in labor negotiations between public employers and employee organizations. This bill could provide a disincentive for employee organizations to negotiate in good faith when a subsequent option exists; this will surely prolong the negotiation process.

AB 646 undermines a local agency's authority to establish local rules for resolving impasse and delays the conclusion of contract negotiations, which will inevitably create a more adversarial relationship between the negotiating parties. For all of these reasons, the City of Lodi opposes AB 646 and respectfully requests your veto of AB 646. Thank you for your consideration on the important issue.

Sincerely,



Bob Johnson
Mayor

C: Assembly Member Toni Atkins (916-319-2176)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Natasha Karl, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: AB 1027 (Buchanan). Publicly Owned Electric Utilities: Utility Poles and Support Structures. **REQUEST FOR VETO**

Dear Governor Brown:

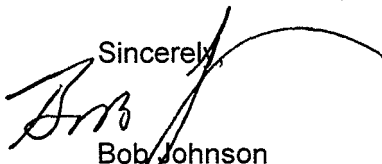
The City of Lodi respectfully requests your veto for Assembly Bill (AB) 1027, which would require local public owned utilities (POU) to provide space on their utility poles for use by communication service providers. AB 1027 would also set the rates that a POU could charge for use of the utility pole.

While Lodi supports the continued deployment of broadband in California, we believe that locally negotiated agreements are an essential component of all telecommunications regulations. Local POU's are already subject to an open decision-making process based on constituent needs. This process ensures that the rates and policies allow for the needs of the community without public financing of a private company. AB 1027 would remove local authority, and benefit private companies at the expense of electric ratepayers and publicly owned communities.

Throughout the year publicly owned utilities attempted to negotiate with the author to try to come to a consensus. Unfortunately, the amendments were not accepted and significant concerns remain.

For these reasons, the City of Lodi requests that you veto AB 1027.

Sincerely,



Bob Johnson
Mayor

C: Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Jennifer Whiting, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: AB 1220 (Alejo). Land Use and Planning: Cause of Actions: Time
Limitations. REQUEST FOR VETO

Dear Governor Brown:

The City of Lodi respectfully requests that you veto AB 1220. This bill would expand the statute of limitations for litigation on the adequacy of a housing element to three years.

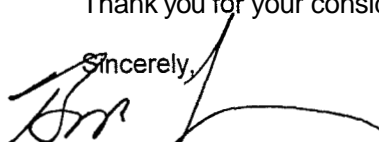
Short statute of limitation periods generally apply to land use and zoning decisions in order to promote certainty for planning agencies and property owners. Once a decision is made, an owner can proceed to obtain permits and establish new uses, businesses, and jobs for the community. This bill would permit those that have a particular perspective to single out actions years after a decision has been made, creating uncertainty precisely at the time when local governments are doing everything they can to encourage projects and economic development.

For cities that are trying to do the right thing with regards to planning obligations, this bill could jeopardize future plans for development, affordable housing, and job opportunities.

Finally, the current economic downturn must be taken into account. Many cities are eliminating planning staff because of lost revenues. This means that cities will have difficulty complying with a myriad of new planning mandates with housing, fire protection, water conservation, flood protection, and greenhouse gas emissions. Put simply, cities are being asked to do more planning with less staff. AB 1220 just assures that cities will continue to pay for this lack of resources well into the future (through liabilities, costs of defense in all cases, and attorneys' fees in cases lost).

For these reasons, the City is opposed to AB 1220 and respectfully requests your veto of this bill. Thank you for your consideration on the important issue.

Sincerely,



Bob Johnson
Mayor

C: Assembly Member Luis Alejo (916319-2128)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Kirsten Kolpitzke, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: AB 1344 (Feuer) Local Governance (As Amended 8/30/2011)
REQUEST FOR VETO

Dear Governor Brown,

On behalf of the City of Lodi, we respectfully request that you veto AB 1344. The City must oppose the end of session amendments that were added without any legislative policy committee hearing and without input from stakeholders.

While the bill contains several good provisions, these late amendments drastically change the law without any rational basis for doing so. Regrettably these amendments force Lodi to oppose AB 1344 for the following reasons:

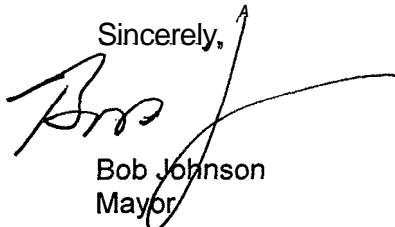
Last minute amendments have not been properly vetted through the legislative policy committee process. With the end of the legislative session and no policy committee meeting on the recent amendments, AB 1344's impact to cities has not been thoroughly examined.

Unreasonable waiting period to adopt a city or county charter. The charter development process does not happen overnight. Cities spend months, sometimes years, developing the text and provisions of a charter. There are several steps that cities take to ensure adequate citizen engagement in the charter development process including, convening charter commissions where the public can attend meetings and provide input. Cities also hold town halls and other meetings to encourage public involvement. Only once the charter is developed do cities take action to put the proposed charter before the voters. Then agencies' are required to provide a 72-hour notice, as required by the Brown Act, before taking action to put a city charter proposal before the voters. Despite early discussions with Assembly Member Feuer on a 10 or 21 day notification timeframe, the bill was amended to require a 10 week process. The City is unaware of a substantial problem among cities warrants extending the noticing period from **3 days to 10 weeks**.

Brown Act amendments poorly drafted. The amendments to the **Brown Act** inappropriately halt a local agencies' ability to discuss everyday business matters. The bill casts an extremely wide net on what can and cannot be discussed in a special meeting. Cities should not be authorized to take action on compensation in special meetings but prohibiting any discussion at all could have significant unintended consequences.

For these reasons, the City of Lodi requests your veto of AB 1344. Thank you for your consideration on the important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Johnson', with a long, sweeping horizontal line extending to the right.

Bob Johnson
Mayor

C: Assembly Member Feur (916-319-2142)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Natasha Karl, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: SB 244 (Wolk). Land Use - General Plan: Disadvantaged
Communities. **REQUEST FOR VETO**

Dear Governor Brown:

The City of Lodi respectfully requests that you veto SB 244, which would (1) require cities to incur substantial costs to update elements of the general plan to address "disadvantaged unincorporated communities" by the next revision of the housing element, and (2) require a Local Agency Formation Commission (LAFCO) to deny an application for any annexation if it is contiguous to a disadvantaged community, unless a second application is filed for the annexation of the disadvantaged community.

This bill is an unfunded mandate and imposes costs on cities to identify, map and describe every disadvantaged unincorporated community within the city's sphere of influence and perform an analysis of water, wastewater, stormwater drainage and structural fire protection needs. The bill further requires an analysis of possible financing alternatives to make the improved infrastructure and services feasible. With the recent budgetary cuts, the City lacks not only the resources but also the staff to address these new responsibilities.

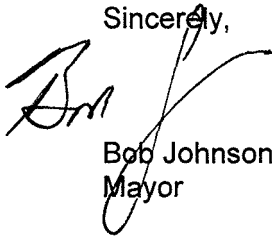
A provision in SB 89 stripped \$130 million from cities in Vehicle License Fees (VLF), part of which had been used to assist cities with the significant costs associated with annexing or incorporating new territory. With the loss of these funds cities no longer have a major source of funding for annexing disadvantaged inhabited territories and providing services, which is one of the main goals of SB 244.

This bill contains a local fee disclaimer, but local agencies in fact do not have the legal authority to impose fees to recover those costs. Proposition 26 recently reiterated that cities cannot charge current residents of the city for the costs associated with the considerable analysis called for in SB 244 since the residents of the city are not being provided a service.

The real policy issue with disadvantaged unincorporated communities is not whether they remain in county jurisdiction or become part of a city, but whether resources can be identified to upgrade the substandard infrastructure and pay for increased levels of service for the inhabitants.

For these reasons, the City of Lodi respectfully requests your veto of SB 244. Thank you for your consideration on the important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Johnson', with a long, sweeping horizontal stroke extending to the right.

Bob Johnson
Mayor

C: Senator Lois Wolk (916-323-2304)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Kirstin Kolpitcke, League of California Cities
Stephen Qualls, League of California Cities

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Via Facsimile: (916) 558-3177

SUBJECT: SB 293 (Padilla) – Public Contracts: Retention Proceeds.
REQUEST FOR VETO

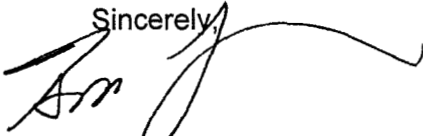
Dear Governor Brown:

The City of Lodi respectfully request that you veto Senate Bill 293 because it will limit a local agency's ability to set retention rates to no more than 5% in public contracts.

Cities use retention in public contracts because it helps assure that work is done in compliance with the contract document and serves as a financial incentive for contractors to complete a project. In addition, should a contractor fail to perform or not complete the project, the retention funds can be used to cover the cost of project completion. For many local agencies, it also common practice to reduce the retention rate midway through a project to reward efficient project completion. Either way, local control over retention rates should be retained as **a** tool to ensure project completion is on-time and within budget.

SB 293 will limit the ability of public agencies to protect themselves by capping the level of retention proceeds and significantly raising the financial risks on construction projects. Because of this, the City of Lodi is opposing this bill and respectfully requests your veto of this bill. Thank you for your consideration on the important issue.

Sincerely,



Bob Johnson
Mayor

C: Senator Alex Padilla (916-324-6645)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Jennifer Whiting, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: SB 469 (Vargas): Land Use: Superstores
REQUEST FOR VETO

Dear Senator Vargas:

The City of Lodi regrets to inform you that the city strongly opposes SB 469 and respectfully request for your veto of SB 469. Before a local land use decision is made, this bill requires that a costly and time-consuming analysis be performed only by the narrow set of applicants which meet the bill's "superstore" criteria.

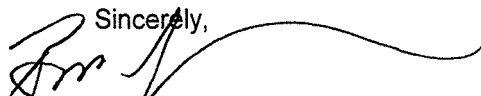
Discriminates Against "Superstores." SB 469 requires "superstores" to submit to a 17-point economic impact analysis, but does not require discount membership stores, department stores, grocery chains, shopping malls and other large projects with similar impacts to submit to the same report. SB 469 attempts to mandate extensive scrutiny of specific types of retailers. In doing so, the bill fundamentally undermines local land use authority.

Land Use Decisions are Not One Size Fits All. City officials are best equipped to make local land use decisions. While the decision to locate a large retailer can be controversial that decision should be reached by local officials in response to their own issues and needs. Individual cities will surely make different decisions on the value of "superstores" in their communities and those decisions must be respected.

Accountability Best Retained at Local Level. Local officials are held directly accountable for land use decisions that affect the quality of life for their city's residents. If we allow that state to dictate what types of retailers will be allowed in our communities, we lose all power to improve our communities as our communities see fit.

For these reasons the City of Lodi respectfully requests your veto of SB 469. Thank you for your consideration on the important issue.

Sincerely,



Bob Johnson
Mayor

C: Senator Juan Vargas (916-327-3522)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Dan Carigg, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: SB 734 (DeSaulnier): Local Workforce Investment Boards: Funding.
REQUEST FOR VETO

Dear Governor Brown:

The City of Lodi respectfully requests your veto of SB 734, which would eliminate the authority of local Workforce Investment Boards (WIB) to determine how to best serve their residents. This legislation **was gutted and amended** in the final days of session to reflect language previously included in SB 776, which was held in the Assembly Appropriations Committee.

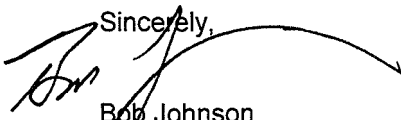
Specifically, this legislation requires that, by program year 2016, local WIBs must invest a minimum of 30 percent of their federal Workforce Investment Act (WIA) Title I funding only on specific job training activities.

The provisions in SB 734 assume that all local WIB needs are the same. Local elected officials currently join with local business leaders, labor and education officials to determine the priorities of local WIBs in compliance with the WIA and existing state law. Each region of California has diverse needs, including the employment and educational needs of local residents, which can vary in how they should be addressed. Investing in training is necessary for unemployed and under-employed city residents to develop and improve occupational skills. However, prescribing mandatory thresholds of funding to be applied only to particular workforce training activities will not permit local WIB members to make decisions that recognize and respond to local needs, thereby defeating the intent of the WIA to provide necessary discretion for implementing priorities at the local level.

With statewide unemployment at 12 percent, we should be working to support job seekers, not eliminate local employment services by mandating expenditures under the WIA and removing local control over critical programs.

For these reasons, the City of Lodi requests your veto of SB 734.

Sincerely,



Bob Johnson
Mayor

C: Senator Mark DeSaulnier (916-445-2527)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Natasha Karl, League of California Cities
Stephen Qualls, League of California Cities

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SUBJECT: SB 922 (Steinberg). Public Contracts: Public Entities: Project Labor Agreements.
(As Amended September 2, 2011). **REQUEST FOR VETO**

Dear Governor Brown:

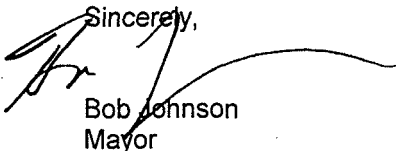
The City of Lodi requests that you veto SB 922, which would set standards for the use of project labor agreements (PLA) during public works projects and would prohibit public agencies from having a provision, initiative, or ordinance that bans the consideration of a PLA. In addition, SB 922 would withhold state funding for projects in charter cities that have such a ban on PLAs that would comply with the new standards.

The City of Lodi is aware of the recent controversy surrounding PLAs for public works projects. There is convincing evidence offered by both the proponents and opponents of PLAs. Our city is weighing both sides of the issue and making a decision on if and how to use PLAs based on what is best for their city. There is no doubt that this issue is complicated and evolving. There is no need for the state to reach into local charter provisions, initiatives, and ordinances to dictate PLA provisions. Even if there was a need, the state should only take this action after careful and thoughtful consideration. SB 922 was gut and amended the last week of session and heard in hastily called committee hearings.

In addition, the language included in the new Section 2502 would withhold state financing of projects in a city that prohibits the governing body from considering a PLA. The proponents of SB 922 consider this an "incentive"; we consider it coercion. In many cases, charter amendments and ordinances are a result of action by the voters. Therefore, it is highly possible that this bill will thwart the will of the voters, and withhold funding in parts of the state in great need of economic growth supplied by infrastructure projects.

For these reasons, the City of Lodi requests your veto on SB 922.

Sincerely,



Bob Johnson
Mayor

C: Senator Darrell Steinberg (916-323-2263)
Senator Tom Berryhill (916-327-3523)
Assembly Member Alyson Huber (916-319-2110)
Jennifer Whiting, League of California Cities
Stephen Qualls, League of California Cities

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City Attorney

October 5, 2011

Congressman Jerry McNerney
1210 Longworth House Office Building
Washington, D.C. 20515

SUBJECT: ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

Dear Congressman McNerney:

In September 2009, the City of Lodi was awarded \$586,200 in American Recovery & Reinvestment Act (ARRA) funds via the Energy Efficiency & Conservation Block Grant (EE&CBG) program. This grant, administered by the United States Department of Energy, was designed to promote energy conservation and job growth in communities across America.

By way of this correspondence, I am writing to inform you that as of last month, the City of Lodi had fully expended the \$586,200 grant – one full year ahead of the program's closure.

As a result of this grant, City staff developed and implemented ten distinctly different projects for the betterment of the Lodi community. These projects include the following:

Lodi Energy Efficient Home Improvement Rebate Program: provided direct rebates to residential customers for the purchase and installation of various energy conservation measures: whole house fans, attic fans, attic/wall insulation, swimming pool pumps, window tinting/shade screens, HVAC duct repairs/replacements, HVAC mechanical unit upgrades, radiant barriers.

Lodi Cool The Earth Educational Project: utilized a non-profit entity to provide on-site school assemblies to students in grades **4-8**; presentation assemblies focused on energy/water conservation and sustainable living practices.

Lodi Low-Income Customer Refrigerator Replacement Program: provided new, EnergyStar-rated refrigerators to low-income seniors and families; via a pair of Lodi appliance dealers, the new refrigerators were delivered to customer homes, and existing, older/inefficient refrigerators were removed.

Lodi Lodging-Savers Energy Efficiency Program: provided direct rebates to four (4) Lodi hotel/motel/motor lodges for the purchase and installation of designated energy efficiency measures: guest room controls, building envelope improvements and lighting retrofits.

Lodi Grape Bowl Lighting Retrofit: installed new, energy efficient lighting at this community athletic field, as well as a new lighting control panel.

Lodi Community Center Energy Management System Project: installed an energy management system upgrade to control the facilities HVAC units (the system ties in with the lighting control energy management system).

Kofu Park Community Building Project: retrofitted this community with a new, high efficiency HVAC system and duct work, new energy efficient lighting, low-E glass windows, R-38 attic insulation, and programmable thermostat.

Lodi Keep Your Cool Program: provided direct, turn-key install of energy efficiency measures (refrigeration door gaskets and strip curtains) to small-to-medium-sized commercial customer sites.

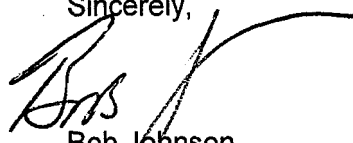
Lodi Computer Server Project: replaced 25 individual servers with 8 new servers utilizing blade technology.

Lodi Solar-Powered Trash Compactor Project: purchased and installed solar-powered trash compactors; these 14 new trash receptacles were installed at park sites around the community.

The projects collectively could save in excess of one million kilowatt hours of electricity annually. On numerous occasions, Department of Energy staff saluted Lodi for the diverse and unique nature of the EE&CBG-funded projects created.

On behalf of the Lodi City Council, City staff and the citizens of our fine community, I extend a heartfelt thank you to the Department of Energy for their commitment to, and assistance with, the EE&CBG program, and to you for your support of the ARRA over these past several years.

Sincerely,



Bob Johnson
Mayor

C: Senator Barbara Boxer
Senator Diane Feinstein
File